FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

August 30, 1995

DOCKET NO. 95-07

SHIPCO TRANSPORT INC.

v.

SATURN AIR SEA CARGO

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DETERMINATION AND AWARD OF ATTORNEY'S FEES
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Complainant Shipco Transport, Inc. has filed a petition asking for an award of attorney's fees, as provided by section 11(g) of the Shipping Act of 1984, 46 U.S.C. app. sec. 1710(g), and by the Commission's regulations, 46 CFR 502.224. Shipco, a non-vessel operating common carrier (NVOCC) had filed a complaint, alleging that respondent Saturn Air Sea Cargo, Inc. owed Shipco $26,296.86 for 27 shipments carried for Saturn, for which Saturn had failed to pay the freight. Shipco had further alleged that Saturn had made bad-faith representations, inducing Shipco to surrender its cargo lien and that Saturn had willfully tendered a check to Shipco for payment on five shipments, knowing that Saturn had

insufficient funds to cover the check and that it would stop payment on the check. Finally, Shipco had alleged that Saturn had violated a credit agreement with Shipco despite repeated demands for payment of the freight. Shipco had alleged that this conduct showed Saturn to have violated section 10(a)(1) of the 1984 Act, 46 U.S.C. app. sec. 1709(a)(1), which forbids shippers from obtaining transportation at less than the applicable rates by means of an unjust or unfair device or means.

After respondent failed to file an answer to the complaint or to a subsequent notice of default and order to show cause, an Initial Decision in the nature of a default judgment was issued against Saturn. (See Initial Decision, served June 2, 1995, F.M.C. notice of finality, July 6, 1995.) On August 9, 1995, Shipco filed the instant petition.[1]

The petition is well supported. It contains a detailed exhibit showing that two attorneys, assisted by law clerks and a legal assistant, worked on the case and also showing the precise number of hours worked. The hourly rates are also given with the attorneys' dates of admission to the bar.[2] Six stages of the dispute are covered in the exhibit from the

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[1]Shipco has asked for a waiver of 46 CFR 502.254(c) and 254(c)(2), which normally prohibit the filing of a petition seeking attorney's fees until 60 days after a final Commission ruling and within 30 days thereafter. Shipco explains that it has been seeking collection of the freight for a long time but that Saturn has continually failed to respond and that Saturn has apparently moved without leaving a forwarding address. Shipco further explains that Saturn's surety has agreed to honor the bond and pay Shipco's award of reparations with attorney's fees, and Shipco wishes to proceed promptly to obtain such payment. In cases such as the instant one, in which respondents have failed to participate and have defaulted, it has been customary to waive the normal time period under 46 CFR 502.10, because it is not likely that a respondent will be seeking court review. See *Deppe Linie v. Total Tank Distribution Inc.*, Default Judgment, 25 SRR 832, 833 n. 3 (ALJ, F.M.C. notice of finality, April 9, 1990); same case, Determination of Attorney's fees. April 24, 1990 at 3 n. 1); Docket No. 92-14, *Arpin International Group v. Sea Lion International*, Determination of Attorney's Fees, August 20, 1992 (unreported); Docket No. 91-58, *Bank Line Limited v. Jet Set Marine, Inc.*, Determination of Attorney's Fees, September 10, 1992 (unreported).

[2]The hourly rates range from $225 and $175 for the attorneys to $50-$80 for the clerks and legal assistant. By allocating work to lower-paid assistants, the firm appears to have reduced its fees. In the rulemaking proceeding which led to the issuance of the 46 CFR 502.254, the Commission commented that compensation
(continued...)

initial demand letter through the petition for attorney's fees, showing various activities, including research, correspondence with the surety, preparation of various pleadings, etc. The grand total of the hours worked times the rates per hour amounts to $7,741.50. To support this tabulation and exhibit, petitioner has furnished the declaration of an independent attorney, Mr. Donald W. Lewis, Esq., given under penalty of perjury. Mr. Lewis is licensed in the District of Columbia and New York state and was employed for thirty years by the U.S. Customs Service of the Department of the Treasury. Mr. Lewis possesses over 30 years' experience in customs laws and regulations and related maritime laws and regulations, among other areas. He has reviewed the tabulation and exhibit and declares that the fees charged are customary in the community where complainant's counsel practice. As is the case throughout this proceeding, respondent Saturn has not replied to the petition.

Section 11(g) of the 1984 Act, 46 U.S.C. app. sec. 1710(g), provides in pertinent part that:

> The Commission shall . . . direct payment of reparations to the complainant for actual injury . . . caused by a violation of this Act plus reasonable attorney's fees.

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²(...continued)
would not be limited to those persons admitted to the bar and cited a court case allowing attorney's fees to be awarded for the time of law students. See Docket No. 86-27, *Attorney's Fees in Reparation Proceedings*, Notice of Proposed Rulemaking, at 9-10, 51 Fed. Reg. 37917, 37919 (1986). In *Sierra Club v. EPA*, 769 F.2d 796, 807-8 (D.C. Cir. 1985), the court approved allocation of the firm's resources among lawyers of varying experience despite the government's objection, stating that "Junior attorneys are not to be left unsupervised, and senior attorneys are not to perform tasks in which their experience is of little value." See also *Laffey v. Northwest Airlines*, 746 F.2d 4, 26 (D.C. Cir. 1984) (efficient allocation among paralegals, associates, and partners).

I find ample support to conclude that counsel for complainant are entitled to attorney's fees in the amount requested.

Accordingly, it is found that attorney's fees in the amount of $7,741.50 are reasonable and such amount is hereby awarded.

Norman D. Kline
Administrative Law Judge